IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.101/02

State

Versus

Devendra Singh Choudhary

DATE OF ORDER :: 06/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Arun Sharma, P.P., for petitioner

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Instant petition has been filed by Prosecution assailing the order dated 29th October, 2001 whereby the order of cognizance taken against accused-respondent u/s.4/25 of Arms Act read with Section 185 of Motor Vehicles Act by learned trial Judge, was rejected and revision petition preferred by accused-respondent was allowed by Revisional Authority under order impugned.

It was alleged in the complaint that when accused-respondent was under intoxication while driving vehicle on 20th July, 1999 and holding unauthorized arms which was recovered from him and accordingly, he has committed an offence u/s.4/25 of Arms Act read with Section 185 of Motor Vehicles Act. On medical examination, the opinion was expressed by the Doctor that voice & behaviour of accused-respondent were normal and there was smell of alcohol from his mouth, but he

was not under intoxication. On the basis of statement recorded by Investigating Officer, learned trial Judge took cognizance against accused-respondent u/s.4/25 of Arms Act read with Section 185 of Motor Vehicles Act – against which revision petition was preferred which was allowed on the premise that so far as relevant notification under Arms Act is concerned, it was duly published in gazette on 27th September, 1999, whereas the present incident took place on 20th July, 1999. As such, the relevant notification is not applicable on the date of incident.

So far as Section 185 of Motor Vehicles Act is concerned, learned Revisional Authority after taking into consideration the medical report of Doctor, observed that merely because there was smell of alcohol that alone was not sufficient to take cognizance against him u/s.185 of Motor Vehicles Act and accordingly, set aside the order by which cognizance was taken against him.

I have considered the submission of counsel and perused the order impugned.

So far as Arms Act is concerned, no contrary material has come on record to show that on the date of incident i.e. 20th July, 1999, it has any applicability since the gazette notification itself was of later date.

So far as Section 185 of Motor Vehicles Act is concerned, on the basis of medical report, certainly it could not be presumed that any offence u/s.185 was committed by him. In such circumstances, this court does not find any error committed by learned Revisional Authority in passing order impugned.

Consequently, the misc. petition fails and is hereby dismissed. Record be sent back immediately to trial court.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.